

The Honorable Paul B. Snyder
Chapter 11
Hearing Date: Friday, June 11, 2010
Hearing Time: 10:30 a.m.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re

WASHINGTON MUTUAL, INC.,
Debtor.

Case No. 08-12229-MFW
District of Delaware

Chapter 11

ESOPUS CREEK VALUE LP and
MICHAEL WILLINGHAM

Plaintiffs,

vs.

WASHINGTON MUTUAL, INC.,
Defendant.

Adversary No. 10-04136

**WASHINGTON MUTUAL, INC.'S
OPPOSITION TO PLAINTIFFS'
MOTION TO REMAND OR, IN THE
ALTERNATIVE, TRANSFER FOR
HEARING ON REMAND**

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1 Defendant Washington Mutual, Inc. ("WMI") submits this memorandum of law in
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3 opposition to plaintiffs Esopus Creek Value LP ("Esopus") and Michael Willingham's
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5 (collectively, "Plaintiffs") Motion to Remand or in the Alternative, Transfer for Hearing on
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7 Remand (the "Motion").
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9 **PRELIMINARY STATEMENT**

10 As part of its continuing campaign to "torpedo" debtors WMI and WMI Investment
11 Corp.'s (collectively, "Debtors") proposed joint plan of reorganization (the "Plan"), on March 3,
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13 2010, the Official Committee of WMI's Equity Security Holders (the "Equity Committee") filed
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15 an adversary proceeding (the "Adversary Proceeding") in the U.S. Bankruptcy Court for the
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17 District of Delaware (the "Delaware Bankruptcy Court") against WMI. In the Adversary
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19 Proceeding, the Equity Committee seeks to compel WMI to immediately convene and hold an
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21 annual meeting of shareholders for the nomination and election of WMI's board of directors.
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23 The Equity Committee supports the election of members of WMI's board of directors who will
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25 oppose the Plan and the proposed global settlement (the "Settlement") of Debtors' multi-billion
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27 dollar litigation claims against certain third-parties (and their claims against Debtors). The
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29 Settlement—which was signed and submitted for the approval of the Delaware Bankruptcy Court
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31 on May 21, 2010—serves as the centerpiece of the Plan and the primary source of recovery for
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33 Debtors' creditors. Thus, if the Settlement were rejected, the Plan would be scuttled and Debtors
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35 would have to begin again—after almost 2 years in chapter 11.
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38 In an attempt to double their chances of blocking the Plan and Settlement, 54 days later,
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40 Mr. Willingham, a member of the Equity Committee who allegedly acquired beneficial
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42 ownership of WMI shares post-bankruptcy, and Esopus, another putative beneficial owner of
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44 WMI shares and an affiliate of a member of the Equity Committee, filed the instant action in the
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46 Superior Court of the State of Washington for the County of Thurston, seeking the same relief
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48 under the same Washington statute against the same defendant as the Equity Committee seeks in
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50 the Adversary Proceeding. Plaintiffs erroneously state that Judge Walrath, before whom WMI's
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1 chapter 11 case has been pending since September 2008, "paved the way" for this case. (Mot.
2 Remand 5.) In fact, although Judge Walrath found the automatic stay inapplicable to this action
3 as a matter of law, Her Honor did *not* consider whether—much less rule that—Plaintiffs' claim
4 had merit or that this Court (or any state court) is the appropriate forum for the claim. (See Order
5 (Apr. 26, 2010), attached as Ex. A to the Declaration of William C. Rava in Support of
6 Washington Mutual, Inc.'s Opposition to Plaintiffs' Motion to Remand or, in the Alternative,
7 Transfer for Hearing on Remand ("Rava Opp. Decl.").)

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15 On May 13, 2010—well *before* the May 27, 2010 deadline for doing so—WMI removed
16 this case to the U.S. District Court for the Western District of Washington (for referral to this
17 Court) under 28 U.S.C. §§ 1452(a){ TA \l "28 U.S.C. § 1452" \s "28 U.S.C. § 1452" \c 2 } and
18 § 1334(b) { TA \l "28 U.S.C. § 1334" \s "28 U.S.C. § 1334" \c 2 } and, to further avoid any
19 procedural delay, the next day, moved to transfer, stay, or dismiss the case in favor of the first-
20 filed Adversary Proceeding. In support, WMI argued (among other things) that because the
21 outcome of this case could derail Debtors' chapter 11 cases, it should be heard in the Delaware
22 Bankruptcy Court. (See Dkt. # 11.)

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31 Plaintiffs now move for equitable remand under 28 U.S.C. § 1452(b){ TA \s "28 U.S.C.
32 § 1452" } or, in the alternative, for an order transferring their motion (as opposed to this case as a
33 whole) to the Delaware Bankruptcy Court. Although Plaintiffs assert that no Court has "ever
34 permitted a matter filed under" RCW 23B.07.030{ TA \l "RCW 23B.07.030" \s "RCW
35 23B.07.030" \c 2 } "to be taken away from the appropriate superior court," they ignore that
36 §§ 1452(a){ TA \s "28 U.S.C. § 1452" } and 1334(b){ TA \s "28 U.S.C. § 1334" } expressly
37 authorize the removal of bankruptcy-related claims originally filed in state court under state law.
38 (Mot. Remand 6.) Indeed, in enacting § 1452(b){ TA \s "28 U.S.C. § 1452" }, Congress's
39 express purpose was to "to grant comprehensive jurisdiction to the bankruptcy courts so that
40 they might deal efficiently and expeditiously with all matters connected with the bankruptcy
41 estate. . . ." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995){ TA \l "*Celotex Corp. v.*

1 *Edwards*, 514 U.S. 300 (1995)" \s "Celotex" \c 1 } (quotation omitted). Significantly, Plaintiffs
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3 "do not contest that" this action is "'related to' WaMu's chapter 11 case or constitute[s] a 'core'
4 proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A){ TA \l "28 U.S.C. § 157" \s "28
5 U.S.C. § 157" \c 2 }," nor do they "contest that under 28 U.S.C. § 1334(b){ TA \s "28 U.S.C.
6 § 1334" } this Court has original jurisdiction over the claim asserted in this action." (Pls.' Stat.
7 Pursuant to Fed. R. Bankr. P. 9027(e)(3) ¶ 4 (Dkt. # 22).)

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12 WMI submits that the Motion should be denied in its entirety. *First*, because this case
13 could derail Debtors' chapter 11 cases, it is illogical for it to be heard outside the Delaware
14 Bankruptcy Court—which is best suited to adjudicate Plaintiffs' claim; this fact alone warrants
15 denial of the Motion. Further, if this case were remanded, it would be prosecuted simultaneously
16 with the Adversary Proceeding; the resulting waste of judicial and WMI estate resources also
17 supports the retention of federal jurisdiction over this case. Considerations of comity likewise
18 support denial of the Motion: allowing the instant action to proceed concurrently with the
19 mirror-image Adversary Proceeding could lead to conflicting judgments—an outcome that will
20 only further and unnecessarily complicate matters.

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25 In contrast, denying the Motion would not require the Delaware Bankruptcy Court to
26 address novel or complex issues of state law (Washington law in this area is neither novel nor
27 complex, and, in any event, the Delaware Bankruptcy Court has ample experience applying other
28 states' laws); prejudice Plaintiffs or any other non-debtor parties (the Equity Committee
29 previously brought an identical action in the Delaware Bankruptcy Court, and there are no other
30 non-debtor parties); or impose an additional burden on the Delaware Bankruptcy Court (which is
31 already presiding over an identical case). Hence, taken together, the equitable remand factors
32 weigh heavily against sending this case back to state court. (*See, infra*, Point I.)

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Second, Plaintiffs agree, in the alternative, to the transfer of the Motion (though not this
case as a whole) to the Delaware Bankruptcy Court. Putting aside the fact that (as far as WMI is
aware) no case from this District or the U.S. Court of Appeals for the Ninth Circuit endorses a

1 federal court's transferring a case *before* deciding a pending remand motion, § 1452(b){ TA \s
2 "28 U.S.C. § 1452" } expressly authorizes only the court to which the action was removed to
3 decide an equitable remand motion. Last, Plaintiffs' proposed procedure would result in undue
4 delay and be highly inefficient. (*See, infra*, Point II.)¹
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9 For all these reasons and those set out below, the Motion should be denied in its entirety.

10 **BACKGROUND**

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12 The background relevant to this Opposition is found on pages 3-7 of WMI's Motion to
13 Transfer, Stay, or Dismiss. (Dkt. # 11.) Additional background regarding the Plan and
14 Settlement is found on pages 7-9 of Debtors' Amended Disclosure Statement, filed with the
15 Delaware Bankruptcy Court on May 21, 2010. (*See* Am. Disclosure Statement, Rava Opp.
16 Decl., Ex. B.)
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22 **ARGUMENT**²

23 **I. PLAINTIFFS HAVE NOT (AND CANNOT) SATISFY THE REQUIREMENTS** 24 **FOR EQUITABLE REMAND UNDER § 1452(b){ TA \S "28 U.S.C. § 1452" }**

25 Plaintiffs have not (and cannot) satisfy the requirements for equitable remand under
26 § 1452(b){ TA \s "28 U.S.C. § 1452" }. In deciding whether to grant equitable remand under
27 § 1452(b){ TA \s "28 U.S.C. § 1452" }, courts may consider "up to" 14 factors:
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- 32 (1) the effect or lack thereof on the efficient administration of
33 the estate if the Court recommends [remand or] abstention;
34 (2) extent to which state law issues predominate over
35 bankruptcy issues; (3) difficult or unsettled nature of applicable
36 law; (4) presence of related proceeding commenced in state
37 court or other nonbankruptcy proceeding; (5) jurisdictional
38 basis, if any, other than § 1334; (6) degree of relatedness or
39 remoteness of proceeding to main bankruptcy case; (7) the
40 substance rather than the form of an asserted core proceeding;
41 (8) the feasibility of severing state law claims from core
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46 ¹ For these reasons, among others, WMI did not agree to Plaintiffs' proposal that the parties agree to the
47 transfer of this case to the Delaware Bankruptcy Court without prejudice to Plaintiffs' purported right to seek
48 remand in that court—something that Plaintiffs would not be permitted to do. Hence, Plaintiffs' suggestion that
49 WMI refused to consent to the proposed stipulation to engender procedural delay is incorrect. (*See* Mot. Remand 4.)

50 ² Unless otherwise indicated, documents filed in the Delaware Bankruptcy Court referred to herein are
51 attached to the Declaration of William C. Rava in Support of WMI's Motion to Transfer, Stay, or Dismiss. (Dkt.
13.)

1 bankruptcy matters to allow judgments to be entered in state
2 court with enforcement left to the bankruptcy court; (9) the
3 burden on the bankruptcy court's docket; (10) the likelihood that
4 the commencement of the proceeding in bankruptcy court
5 involves forum shopping by one of the parties; (11) the
6 existence of a right to a jury trial; (12) the presence in the
7 proceeding of nondebtor parties; (13) comity; and (14) the
8 possibility of prejudice to other parties in the action.

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10 *Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807, 821 n.18 (B.A.P. 9th Cir. 2009){
11 TA \l "*Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807 (B.A.P. 9th Cir. 2009)" \s
12 "Nilsen" \c 1 }. In addition, courts have held that whether a proceeding is "core is a significant
13 factor weighing in favor of adjudicating the dispute in the bankruptcy court." *Id.*
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17 Here, factors 1, 6-7, and 13 weigh against remand, and the remaining factors (2-3, 4-5, 8-
18 12, and 14) are neutral.
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21 Factors 1 and 6: Effect on Efficient Administration of the Estate and Degree of
22 Relatedness/Remoteness of Proceeding to Main Bankruptcy Case. These 2 factors militate
23 against remand. The outcome of this case could significantly impact the administration of
24 Debtors' estates: if WMI were ordered to immediately convene and hold an annual meeting of
25 shareholders for the nomination and election of its board of directors, the expense to its estate
26 would be considerable, totaling in the millions of dollars.³ As a result, distributions to WMI's
27 creditors, who have gone 20 months without payment, would be adversely affected. And, if this
28 case were returned to state court, it would be prosecuted simultaneously with an identical
29 proceeding already pending in the Delaware Bankruptcy Court (the Adversary Proceeding); the
30 resulting waste of judicial and WMI estate resources also militates against remand. Most
31 important, if Plaintiffs succeed in causing the appointment of directors who will reject the Plan
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45 ³ At the least, WMI would incur the following costs if it were required to hold an annual meeting of
46 shareholders: (a) prepare an annual report, including obtaining audited financial statements; (b) prepare the proxy
47 statement; (c) pay legal costs associated with seeking exemptive relief from the U.S. Securities and Exchange
48 Commission and preparation of the proxy statement and accompanying annual report to shareholders in compliance
49 with SEC requirements; (d) preparing proxy materials for SEC filing, including typesetting and alterations; (e) file,
50 print, process, mail and otherwise disseminate proxy materials; (f) solicit proxies; and (g) rent a venue large enough
51 to accommodate shareholders.

1 (and, instead, back a "swing for the fences" litigation strategy against (among others) JPMorgan
2 Chase, N.A. and the Federal Deposit Insurance Corp.), Debtors' chapter 11 cases likely will be
3 jeopardized. For these reasons, maintaining bankruptcy court jurisdiction over this case is
4 consistent with both the equitable remand factors and the purpose of § 1452(b){ TA \s "28 U.S.C.
5 § 1452" }: "'to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal
6 efficiently and expeditiously with all matters connected with the bankruptcy estate. . . ."
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8 *Celotex*, 514 U.S. at 308{ TA \s "Celotex" } (quotation omitted).
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11 Factor 7: Substance Rather Than Form of an Asserted Core Proceeding. Plaintiffs'
12 claim—which even Plaintiffs do not dispute is "core" in nature—could impact the administration
13 of Debtors' chapter 11 cases and fundamentally alter the relationship between Debtors and their
14 stakeholders. Specifically, the stated purpose of the Adversary Proceeding and this action is to
15 cause a re-distribution of Debtors' resources for the sole benefit of the Debtors' most junior
16 stakeholders—Debtors' shareholders; hence, regardless of whether it is pled as a state law cause
17 of action, the substance, and likely impact, of Plaintiffs' claim strongly supports retaining
18 bankruptcy court jurisdiction over this action.
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21 Factor 13: Comity. This consideration likewise counts against remand. Judicial comity
22 is defined as the "recognition and respect that a court of one state or jurisdiction shows to another
23 state or jurisdiction in giving effect to the other's laws and political decisions." Black's Law
24 Dictionary 242 (8th ed. 2004){ TA \l "Black's Law Dictionary 242 (8th ed. 2004)" \s "Black's
25 Law Dictionary 242 (8th ed. 2004)" \c 6 }. If this case were remanded, it could not be
26 consolidated with the Adversary Proceeding. Requiring WMI to simultaneously litigate the
27 same 2 cases in 2 different fora (commenced by or on behalf of the same parties) could result in
28 conflicting judgments; such an outcome is, of course, inconsistent with the principles of comity.
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31 Factors 2 and 3: Extent to Which Issues of State Law Predominate and Difficulty of
32 Applicable State Law. These 2 factors are neutral. Although Plaintiffs' claim is pled under state
33 law, its adjudication will require analysis of WMI's reorganization: as set out in WMI's
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1 opposition to the Equity Committee's motion for summary judgment in the Adversary
2 Proceeding, whether Plaintiffs are entitled to the relief that they seek depends on the resolution
3 of factual and legal issues related to the Equity Committee, Plaintiffs, WMI, and its chapter 11
4 case. (*See* WMI Opp. Summ. J. Mot. 8-22.) Given its familiarity with both WMI's chapter 11
5 case and the Adversary Proceeding, the Delaware Bankruptcy Court is best suited to adjudicate
6 Plaintiffs' claim. Additionally, Plaintiffs apparently concede that the applicable law is not
7 complex. (*See* Mot. Remand 7 ("This case involves a simple action arising out of a Washington
8 statute. . . .")) *See In re Wa. Mut., Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 107986, at *18 (W.D.
9 Wash. Nov. 2, 2009){ TA \l "*In re Wa. Mut., Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 107986
10 (W.D. Wash. Nov. 2, 2009)" \s "*In re Wa. Mut., Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 107986
11 (W.D. Wash. Nov. 2, 2009)" \c 1 } (applicability of state law did not require equitable remand:
12 "while Plaintiffs' claims are based on state law, they are not unusual or complex" (citation
13 omitted)). Regardless, there is no reason that the Delaware Bankruptcy Court cannot correctly
14 apply Washington law. *See SenoRx, Inc. v. Coudert Bros., LLP*, 2007 U.S. Dist. LEXIS 40923,
15 at *8 (N.D. Cal. May 24, 2007){ TA \l "*SenoRx, Inc. v. Coudert Bros., LLP*, 2007 U.S. Dist.
16 LEXIS 40923 (N.D. Cal. May 24, 2007)" \s "*SenoRx, Inc.*" \c 1 } ("Despite the presence of state
17 law claims and the need to interpret a state statute, bankruptcy courts are capable of resolving
18 issues of state law, as the court will be able to do in this case." (citation omitted)).

19 Factor 4: Presence of Related Proceeding Commenced in State Court or Other Non-
20 bankruptcy Proceeding. This factor is also neutral. Indeed, because the Washington state case
21 was removed, there is no longer a related proceeding in state court (or related non-bankruptcy
22 proceeding); instead, the only related proceeding is the Adversary Proceeding—the pendency of
23 which, of course, counsels against remand.

24 Factors 5 and 6: Jurisdictional Basis, If Any, Other Than § 1334{ TA \s "28 U.S.C.
25 § 1334" }. Although WMI removed this case under §§ 1452(a){ TA \s "28 U.S.C. § 1452" } and
26 1334(b){ TA \s "28 U.S.C. § 1334" }, Plaintiffs do not allege that this action could *not* have been

1 brought in federal district court under federal diversity jurisdiction, and as Plaintiffs admit,
2 because this is a "core" proceeding, it can and should be adjudicated in bankruptcy court. *See* 28
3 U.S.C. §§ 1332{ TA \l "28 U.S.C. § 1332" \s "28 U.S.C. § 1332" \c 2 }, 157(b)(1){ TA \s "28
4 U.S.C. § 157" }.

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9 Factor 8: Feasibility of Severing State Law Claims from Core Bankruptcy Matters to
10 Allow Judgments to Be Entered in State Court with Enforcement Left to Bankruptcy Court. This
11 factor does not apply to this action: there is no severable state law claim; rather, the state law
12 claim is itself a core bankruptcy claim.

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17 Factors 9 and 10: Burden on Bankruptcy Court Docket and Likelihood That
18 Commencement of Proceeding in Bankruptcy Court Involves Forum Shopping by One of the
19 Parties. The Equity Committee has already filed an identical claim against WMI in the Delaware
20 Bankruptcy Court (the Adversary Proceeding), and, as a result, denying the Motion and
21 transferring this case will not increase the Delaware Bankruptcy Court's burdens. Moreover,
22 WMI's attempt to have this case returned to the court in which Plaintiffs' representatives (the
23 Equity Committee) originally filed it cannot constitute forum shopping. If anything, WMI's
24 motion to transfer is the remedy to (Plaintiffs') forum shopping.

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33 Factor 11: Right to a Jury Trial. Because Plaintiffs have not sought a jury trial, this
34 factor is irrelevant here.

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37 Factors 12 and 14: Presence in the Proceeding of Nondebtor Parties and Possibility of
38 Prejudice to Other Parties in the Action. Other than Plaintiffs, there are no non-debtor parties to
39 this action; and even if the Motion were denied, Plaintiffs would not be prejudiced (nor do they
40 claim that they would): as the Equity Committee previously filed an identical case in the
41 Delaware Bankruptcy Court, even if the instant action were to remain in federal court, Plaintiffs
42 would still be able to litigate their claim in the forum of their (first) choice (the Delaware
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1 Bankruptcy Court). Conversely, if the Motion were granted, Debtors and their creditors would
2 be considerably prejudiced. (*See, supra, e.g.*, Discussion of Factors 1 and 6.)⁴
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5 **II. THE MOTION CANNOT PROPERLY BE TRANSFERRED TO THE**
6 **DELAWARE BANKRUPTCY COURT**
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8 Plaintiffs agree, in the alternative, to the transfer of the Motion (though not the case as a
9 whole) to the Delaware Bankruptcy Court. Setting aside the fact that (as far as WMI is aware)
10 no case from this District or the U.S. Court of Appeals for the Ninth Circuit has endorsed a
11 federal court's transferring a case *before* deciding a pending remand motion, § 1452(b){ TA \s
12 "28 U.S.C. § 1452" }, the very statute upon which Plaintiffs move, plainly states that only the
13 court to which the action was removed is authorized to decide an equitable remand motion. *See*
14 28 U.S.C. § 1452{ TA \s "28 U.S.C. § 1452" }(b) ("*The court to which such claim or cause of*
15 *action is removed may remand such claim or cause of action on any equitable ground.*"
16 (emphasis added)); *see Frelin v. Oakwood Homes Corp.*, 292 B.R. 369, 380 (Bankr. E.D. Ark.
17 2003){ TA \l "*Frelin v. Oakwood Homes Corp.*, 292 B.R. 369 (Bankr. E.D. Ark. 2003)" \s
18 "*Frelin*" \c 1 } ("§ 1452 provides for removal to the district in which the removed civil action was
19 pending *rather than the district in which the bankruptcy case was filed*, and provides that the
20 court to which the civil action is removed may remand such cause of action on any equitable
21 ground." (emphasis added)); *AG Indus., Inc. v. AK Steel Corp. (In re AG Indus., Inc.)*, 279 B.R.
22 534, 540 (Bankr. S.D. Ohio 2002){ TA \l "*AG Indus., Inc. v. AK Steel Corp. (In re AG Indus.,*
23 *Inc.)*, 279 B.R. 534 (Bankr. S.D. Ohio 2002)" \s "*AG Indus., Inc.*" \c 1 } (same).
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40 Here, given that this action was removed to the U.S. District Court for the Western
41 District of Washington (for referral to this Court), under § 1452(b){ TA \s "28 U.S.C. § 1452" },
42 only this Court is authorized to decide the Motion. Moreover, by commencing 2 identical
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47 ⁴ Plaintiffs do not move to abstain under 28 U.S.C. § 1334(c)(1){ TA \s "28 U.S.C. § 1334" } and (2); nor
48 could they: the Washington state action has already been removed. *See Schulman v. Cal. (In re Lazar)*, 237 F.3d
49 967, 981-82 (9th Cir. 2001){ TA \l "*Schulman v. Cal. (In re Lazar)*, 237 F.3d 967, 981 (9th Cir. 2001)" \s
50 "*Schulman*" \c 1 } ("because there is no pending state proceeding, §§ 1334(c)(1){ TA \s "28 U.S.C. § 1334" } and
51 1334(c)(2) are simply inapplicable to this case") *cited in SenoRx*{ TA \s "*SenoRx, Inc.*" }, 2007 U.S. Dist. LEXIS
40923, at *5-6 ("In the Ninth Circuit, abstention is unavailable if there is no pending state court proceeding.").

1 actions across the United States, Plaintiffs and their representatives on the Equity Committee
2 have already wasted judicial and party resources. By seeking what is effectively a "conditional"
3 venue transfer, they risk the further waste of judicial and party resources. Indeed, it would be
4 highly inefficient to send this case approximately 3,000 miles across the U.S. only to have Judge
5 Walrath decide what is a threshold procedural issue; it would be much more efficient for this
6 Court to decide the both the remand and transfer issues. Specifically, if this Court were to deny
7 the Motion, but grant WMI's motion to transfer, this case would travel across the country a
8 maximum of one time (from this Court to the Delaware Bankruptcy Court); in contrast, should
9 this Court transfer this Motion to Judge Walrath and then Her Honor deny remand, it will travel
10 across the country *twice* (from this Court to the Delaware Bankruptcy Court and then back from
11 the Delaware Bankruptcy Court to Washington Superior Court)—with all the attendant delays.
12 So "as a logical and practical matter, th[is] [C]ourt should determine whether any bankruptcy
13 court should hear a proceeding before it determines which bankruptcy court should hear it."
14 *Lone Star Indus., Inc. v. Liberty Mut. Ins.*, 131 B.R. 269, 273 (Bankr. D. Del. 1991){ TA \l "*Lone*
15 *Star Indus., Inc. v. Liberty Mut. Ins.*, 131 B.R. 269 (Bankr. D. Del. 1991)" \s "*Lone Star Indus.,*
16 *Inc.*" \c 1 }.⁵

32 CONCLUSION

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34 For all the foregoing reasons, Plaintiffs' Motion to Remand or in the Alternative, Transfer
35 for Hearing on Remand should be denied in its entirety.
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46 ⁵ Plaintiffs' request for legal fees and costs likewise should be denied. A court may only award fees where
47 a removal "lacked an objectively reasonable basis." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005){
48 TA \l "*Martin v. Franklin Capital Corp.*, 546 U.S. 132 (2005)" \s "*Martin*" \c 1 }. Plaintiffs have not alleged that
49 this Court lacks jurisdiction under § 1334{ TA \s "28 U.S.C. § 1334" } or that removal under § 1452(b){ TA \s "28
50 U.S.C. § 1452" } was technically improper, and, as set out above, equitable remand is not warranted here. As a
51 result, an award of legal fees or costs would be improper in this case.

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2 DATED: June 4, 2010.
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